

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0522

ORIGINAL

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ROLAND DEE TIREY,

Defendant and Appellant.

FILED

AUG 16 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**UNOPPOSED MOTION TO WITHDRAW
APPELLANT'S EXHIBITS E AND F**

Appellant Roland Dee Tirey (Tirey), through the undersigned counsel, respectfully requests to withdraw Exhibits E and F which were appended to Appellant's Brief.

Exhibit E is a map of the United States showing national climatic data and state rankings during the time period during which Tirey's Adult Probation and Parole Officer failed to conduct a home check, thereby leaving him homeless. (Appellant's Br. at Ex. E.) The State asserted in its Response Brief that Exhibit E was not part of the record because "where Tirey was staying at night and how he was keeping warm was not at issue in this revocation proceeding." (Appellee's Br. at 20.)

Exhibit F is a “Supervision Strategy and Compliance Form” signed by Tirey and his Adult Probation Officer that required Tirey to “enroll” in treatment, not “attend” treatment within two weeks of November 12, 2008. (Appellant’s Br. at Ex. F.) The State asserted that Exhibit F was not provided to the district court by Tirey’s Adult Probation and Parole Officer “because the distinction between ‘enrolling’ and ‘attending’ was not at issue.” (Appellee’s Br. at 15.) In reply, Tirey argued that any omission of this exhibit from the record below was due to APO Fairbank’s failure to provide it to the court. (Appellant’s Reply Br. at 8.)

Although not specifically cited, Appellant’s inclusion of these exhibits was based upon this Court’s apparent willingness to consider a relevant document when counsel was “in a quandary” about whether to bring such a document to the attention of the Court. *See State v. St. Dennis*, DA-09-0284, Br. of Amicus Curiae American Civil Liberties Union of Montana Foundation at 5, fn1. A recent decision of this Court contained a clarification of its expectation that the Rules of Appellate Procedure are to be strictly followed. *State v. James*, 2010 MT 175, ¶¶ 20, 26 fn 2-3, ___ Mont. ___, ___ P.3d ___.

The State did not cite authority regarding Exhibits E and F in its Response Brief. (Appellee’s Br. at 15, 20.) However, given this Court’s footnotes in *James*, the undersigned counsel must inform the Court that the district court record on

appeal does not include Exhibits E and F. Mont. R. App. P. 8(1). Accordingly,
Tirey moves to withdraw Appellant's Exhibits E and F.

The State has been contacted regarding this motion and does not object.

Respectfully submitted this 16th day of August, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing

Motion to Withdraw Exhibits E and F to be mailed to:

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